

REMARKS/ARGUMENTS

Claims 1-5, 7-32 and 34-54 stand rejected in the outstanding Official Action. Claim 1 has been amended and therefore claims 1-5, 7-32 and 34-54 remain in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copy of the priority document is very much appreciated. Additionally, the Examiner's confirmation of PTO acceptance of the previously filed formal drawings is appreciated.

On page 2, sections 1-3 of the Official Action, claim 1 is rejected under 35 USC §112 (second paragraph) as being indefinite. Claim 1 has been amended in accordance with an agreement reached during a telephone interview with the Examiner.

Telephone interview with Examiner 10/29/08

A brief telephone discussion was had with Examiner Brainard on October 29, 2008 concerning the §112 rejection. Applicants proposed amending the claim to delete "images of the light source" and instead refer to "light spots." Applicants pointed out that line 3 of claim 1 provides clear antecedent basis for "light spots" thereby obviating any possible antecedent basis objection. The Examiner indicated that this clarification that the "array of distinct light spots" was the same as the previously recited "light spots" obviated any further objection.

During the interview, Applicants also pointed out that the present application (Serial No. 10/534,498) had not only the referenced co-pending Application No. 10/534,495 (hereinafter the '495 application), but also another co-pending Application No. 10/534,494 (hereinafter the '494 application). Applicants also noted that all three co-pending applications were filed on the same

date, i.e., May 10, 2005. Applicants also noted that while the ‘495 application included claims which were the “base invention” i.e., the broadest claim coverage, the Patent Office apparently had not conducted any examination of the claims in the three related and co-pending applications.

The Examiner’s attention is directed to the Manual of Patent Examining Procedure (MPEP) Section 804 (page 800-17 in the online version of the MPEP) which states that in the case of non-statutory double patenting rejections, “if both applications are filed on the same day, **the examiner should determine which application claims the base invention** and which application claims the improvement (added limitations).” The MPEP specifically states that “the ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.”

Applicants note that none of the three co-pending applications have resulted in an issued patent, although the Issue Fee has been paid in co-pending ‘494 application. Applicants understand that a patent will issue on the co-pending ‘494 application in a reasonable period of time.

Pursuant to the MPEP, this Examiner should have determined which application claims the base invention and which application claims the improvement. Applicants’ review of the claims indicates that the claims in the ‘495 application relate to a spot projector apparatus, i.e., the “base invention,” whereas the claims in the present application relate to a ranging apparatus which incorporates a spot projector apparatus. Accordingly, as between these applications, the

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'495 application claims the base invention and the present case claims the improvement or more limited case.

In view of the requirements of the MPEP and the fact that the Issue Fee has been paid in the '494 pending application, it was suggested in the interview with Examiner Brainard, that the Examiner wait until co-pending Application 10/534,494 actually issues as a patent, and then reinstitute the obviousness-type double patenting rejection. Applicants will then file a terminal disclaimer in the present application (clearly avoiding any requirement of filing terminal disclaimers in all three related applications) which should permit the present application to then pass to issue.

In view of the above, Applicants respectfully traverse each of the provisional obviousness-type double patenting rejections on the grounds that no patent has yet issued. As a consequence, because each of the rejections in the present application are based at least upon the co-pending application 10/534,495, the provisional rejections should be withdrawn and, when one of the there co-pending applications issues as a patent, reinstated as a non-provisional obviousness-type double patenting rejection.

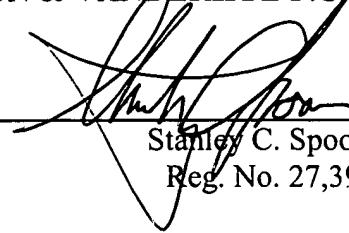
Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-5, 7-32 and 34-54 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

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Respectfully submitted,

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